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FISCAL IMPACT STATEMENT

LS 6909

BILL NUMBER: SB 246

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 19, 2006

SUBJECT: Sex Offenders.

FIRST AUTHOR: Sen. Wyss

FIRST SPONSOR: Rep. Foley

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Residence:* The bill specifies that "reside" for an offender against children means to spend more than 2 nights in a residence in any 30-day period.

Expansion of Definition of Sexually Violent Predator: It expands the definition of a "sexually violent predator" to include persons above the age of 18 who commit an offense against a child less than 12, persons with certain prior convictions, and persons who used deadly force, used a deadly weapon, or caused serious bodily injury in the commission of a sex offense.

Crimes Committed in Other States: The bill also adds crimes committed in other states that are substantially similar to certain Indiana sex crimes to the list of underlying offenses that permit a person to be charged as a repeat sexual offender.

Penalty Provisions: It prohibits a sexually violent predator from working or volunteering on school property or at a public park or youth program center. It also prohibits certain sex offenders from residing within: (1) 1000 feet of a school, public park, or youth program center; or (2) one mile of the victim's residence. It provides various penalties for violations of these provisions.

Statute of Limitations: The bill provides that the DNA exception to the statute of limitations for Class B, C, and D felonies applies when DNA analysis provides evidence sufficient to charge a person with an offense. (Currently the DNA exception applies when DNA analysis permits the discovery of the offender's identity.)

Conformance: It makes certain other changes.

Effective Date: July 1, 2006.

Explanation of State Expenditures: *Expansion of Definition of Sexually Violent Predator:* Under current law, sexually violent predators (SVP) are determined in a court of law based on evidence provided by the prosecuting attorney in a hearing. They are currently defined in statute as an individual who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in additional sex and violent offenses in the future.

The bill expands the definition of SVP to include a person who has committed a sex and violent offense under IC 5-2-12-4 and who: (1) committed a sex and violent offense by: (a) using or threatening to use deadly force, (b) while armed with a deadly weapon, or (c) that results in serious bodily injury to a person other than a defendant; (2) is at least 18 years of age and commits an offense against a child less than 12 years of age; (3) has a previous conviction for a sex and violent offense, or (4) has been found by the court to suffer from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in a sex and violent offense. These changes could result in the number of persons required to register for life as a sex offender increasing, and subsequently the number of persons monitored by local law enforcement agencies for life increasing as well.

In CY 2004, 1,142 offenders were committed to the Department of Correction (DOC) for one of the offenses which is the basis of being an SVP. It should be noted that this number includes persons who may have already been defined as an SVP under current law. The Indiana Criminal Justice Institute (ICJI), however, reports that very few individuals are classified as SVPs. Currently, there are approximately 14,537 individuals listed on the Sex and Violent Offender Directory, and 43 are identified as an SVP. In FY 2005, 5 SVPs were added to the directory. The number of people defined as SVP will depend on the decisions of the court and the circumstances of the crime.

Sheriffs (or the police chief of a consolidated city) are statutorily required to verify a sex offender's current residence. Forms are mailed to sex offenders (SO) annually and to SVPs every 90 days. If an offender fails to return a signed registration form, the sheriff (or the police chief of a consolidated city) is required to immediately notify the ICJI and the prosecuting attorney. It is a Class D felony for a sex offender to fail to register. It is a Class C felony if they have a prior unrelated conviction under the provision. Prosecuting attorneys would experience an increase in workload if more offenders are classified as SVPs and the SVPs fail to return forms to the sheriffs. The Indiana Sheriffs' Association reports that whether or not prosecuting attorneys charge an SO or SVP with not registering is dependent on the county. In CY 2004, there were 23 persons convicted for not registering.

An increase in the number of SVPs would result in an increase in workload for sheriffs (or a police chief of a consolidated city). Additionally, expenditures would increase for postage. The Indiana Sheriffs' Association (ISA) reports that counties vary as to methods used for mailing registration forms to offenders. Some counties send the forms certified mail, with the majority using regular mail through the United States Post Office. Currently, postage to mail a letter is \$0.39; the cost is \$4.64 to send a one-ounce certified mail letter with a return receipt requested.

Crimes Committed in Other States: Also, by adding offenses committed in another jurisdiction that are substantially similar to a sex offense in Indiana, more offenders could be determined by the court to be a repeat sex offender and subject to an additional fixed term of incarceration that may not exceed 10 years. If offenders are incarcerated for longer periods of time, costs to the state could increase. There are no data available to

estimate how many more offenders may be found to be repeat sex offenders as the result of adding offenses committed in another jurisdiction.

Penalty Provisions: Residency - There are no data available to indicate how many offenders against children would be convicted of a Class D felony for residing within 1,000 feet of a school, a youth program center, or a public park, or for establishing a residence within one mile of the residence of the victim.

Under current law, there are certain exceptions to these residency requirements which are removed under the bill. This could result in certain offenders having to relocate their residence.

Background on Offenders Against Children: The bill would define "offenses against children" to include child molesting, child exploitation, child solicitation, child seduction, and kidnapping where the child is less than 18 years of age. In CY 2004, there were 517 offenders released from a state facility who had committed one of these offenses. (Note: The release data do not identify the age of the victim. The number of kidnapping offenders may be overstated as a result.)

Compensated Work or Volunteering - Also, there are no data available to indicate how many SVPs may be convicted of knowingly or intentionally working for compensation or volunteering on school property, at a youth program center, or at a public park, a Class D felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Statute of Limitations: There are no data available to indicate how many more offenders may be convicted with crimes if the statute of limitations is changed.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000.

Explanation of Local Expenditures: *Penalty Provision:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to house an offender in a county jail is \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Criminal Justice Institute; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Mike Eslinger, Indiana Sheriffs' Association; Indiana Criminal Justice Institute.

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